

## **SPECIAL MASTER HEARING MINUTES**

**Thursday, September 22, 2004  
Commission Chamber, Lake Park Town Hall  
535 Park Avenue, Lake Park, Florida**

The Special Master for the Town of Lake Park conducted a Special Master hearing on September 22, 2004 at 1:30 p.m. in the Commission Chamber, Lake Park Town Hall, 535 Park Avenue, Lake Park, Florida.

- I. CALL TO ORDER: 1:45 p.m
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL:

Paul Nicoletti, Special Master	Present
Karen Roselli, Town Attorney	Present
Gregory Durgin, Code Compliance Officer	Present
Melanie Dahlen, Code Compliance Secretary	Present

#### **IV. VIOLATION HEARING**

S.M. CASE No. 04-00601  
RESPONDENT: Kelsey Club/Sue Ellen Mosler  
LOCATION: 700 Park Ave.

##### **Violation I: Sec. 32-50-1 Prohibited bar/lounge within P.A.D.D. district**

###### **RECOMMENDATION:**

A MOTION that: testimony and other evidence supports a finding of fact that the Respondent is in violation, as alleged in the NOV/NOH, and to approve the Town staff's recommendation to achieve compliance and pay the Town's administrative costs by **09-27-04**, failing which a fine of \$200.00/day shall accrue.

##### **Violation II: Sec. 13-3 No occupational license for a bar/lounge**

###### **RECOMMENDATION:**

A MOTION that: testimony and other evidence supports a finding of fact that the Respondent is in violation, as alleged in the NOV/NOH, and to approve the Town staff's recommendation to achieve compliance and pay the Town's administrative costs by **09-27-04**, failing which a fine of \$200.00/day shall accrue.

**Violation III: Sec. 29-7(a)(6) Prohibited parking in streets and service alleys**

**RECOMMENDATION:**

A MOTION that: testimony and other evidence supports a finding of fact that the Respondent was in violation, as alleged in the NOV/NOH, and to approve the Town staff's recommendation to issue an ORDER NOT TO REPEAT, providing that any repeat violations shall result in the imposition of a fine of \$500.00/day which shall accrue from the date of the violation, together with the Town's administrative costs.

The Respondent, Sue Ellen Mosler was in attendance with Rachel McBride, Esq. as representing counsel.

Special Master, Paul Nicoletti announced that the attorneys in this case are working on stipulations to facts and at this time advised that the witness rule will be invoked which will exclude witnesses from the hearing until after their testimony has been given.

Special Master called attention to the court recorder and asked that all witnesses giving testimony speak clearly and slowly to preserve accuracy of the recording.

All witnesses left the hearing at this time to wait until called, after admonishment from the Special Master to refrain from speaking about the case or their witness testimony to anyone.

Special Master stated for the record that twenty-three (23) stipulated facts were agreed upon and submitted by the attorneys in this case.

Ms. Roselli stated the Town's position regarding Violation III and this portion of the case was dismissed without presentation.

An opening statement was made by Ms. Roselli regarding the Town's case against the above Respondent for violation of Lake Park Zoning Code in the prohibited use of the above property as a Bar/Lounge in the Park Avenue Downtown District (P.A.D.D.) and for lack of occupational license application for the Kelsey Club. Ms. Roselli further made two (2) pre-trial motions involving evidence relating to the Town's zoning code and request for an off-site visit by the Special Master to the Kelsey Club in order to observe the premises.

Ms. McBride's opening statement on behalf of the Respondent, disputed the Town's position noting that no definition of bar/lounge exists in the Town code and furthermore the Kelsey Club operates as a theater within the Town code's definition, where alcohol is served on the premises in conjunction with scheduled live performances. Moreover, the Kelsey Club offers no drink "specials", "happy hour" or "ladies night", events typically advertised by a bar/lounge business. Respondent's position asserts the Town's fundamental motive for bringing this case as objections to the dress and demeanor of the Kelsey Club's clientele and

has nothing to do with the occupational license or land use issues raised by the Town.

The Town's first witness, Gregory Durgin, Code Compliance Official for the Town of Lake Park, was properly sworn in by the Code Compliance Secretary. Mr. Durgin's testimony included observations upon visits to the Kelsey Club during which he drew conclusions regarding the business being operated as a bar/lounge. Testimony given included observations pertaining to the interior and exterior building areas, patrons, staff and performers at the Kelsey Club.

Special Master noted for the record as accepted into evidence without objection: A six (6) page application for occupational license from the Respondent marked for identification as Town's Exhibit 1.

Special Master further noted for the record as accepted into evidence without objection, Town's Exhibits 2 through 9 which included materials obtained via local periodicals and website publications advertising and depicting the Kelsey Club as a bar/lounge.

Ms. McBride's cross examination of Mr. Durgin included questions regarding his observations made upon visits to the Kelsey Club.

The second witness for the Town, Jamie Gentile, former interim Community Development Director for the Town and Planning Director of Calvin-Giordano and Associates, was presented and after being properly sworn in, commenced testimony.

Mr. Gentile's testimony outlined personal observations and interpretations made upon a visit to the Kelsey Club regarding the use of the business as a bar/lounge. Mr. Gentile answered questions relating to his area of expertise in zoning and land use within the P.A.D.D. and it was confirmed that the Kelsey Club in Mr. Gentile's expert opinion operated a prohibited use.

Ms. McBride's cross examination followed in order to receive testimony confirming the Town's definition of theater and bar/lounge.

The Town's third and final witness, Lake Park Town Attorney, Tom Baird was presented and sworn in.

Special Master noted, for the record Mr. Baird's Curriculum Vitae, submitted without objection into evidence and marked for identification as Town's Exhibit 10.

Discussion ensued between Special Master and the attorneys in this case regarding the qualification of Mr. Baird as an expert witness in light of his position as Town Attorney. Mr. Baird offered assurance that he had no involvement in the investigation of this case or in guiding the prosecution or case preparation. Ms. Roselli confirmed that the responsibility in this case belonged solely to her.

Ms. McBride stated a clear objection to Mr. Baird's testimony as an expert witness.

Special Master advised that Mr. Baird's testimony as an expert witness will be weighed against his position as Town Attorney, and directed Ms. Roselli to proceed with the witness.

Mr. Baird answered questions regarding his visit to the Kelsey Club and subsequent observations and interpretation of Town Zoning Codes governing the Park Avenue Downtown District and definitions of bar/lounge and theaters as they pertain to occupational licensing. Mr. Baird also commented on the depiction of the Kelsey Club as a bar/lounge or tavern through materials published in periodicals and the Kelsey Club website.

Ms. McBride's cross examination of this witness included questions clarifying interpretations and definitions of Town Zoning Codes and definitions as with the preceding witness.

The Town rested its case and testimony proceeded with Ms. McBride's first witness.

Respondent, Sue Ellen Mosler, after being sworn in was presented as Respondent's first witness. Ms. Mosler testified to her ownership interest in the above property and businesses: both the art gallery and theater. Testimony detailed the building's interior layout and design as being that of a live production and performance venue.

Special Master noted, for the record, a black bound book containing a composite of photographs marked Respondent's Exhibit 1-A through S entered without objection as evidence in this case. The photographs presented included images of the Kelsey Clubs interior and exterior areas as they appear during the day.

In Ms. Roselli's cross examination, Ms. Mosler testified to the licensing for the business as a theater and application for that use along with the art gallery and that the Kelsey Club operates as such, notwithstanding the lack of plays or dramatic performances presented. Ms. Mosler further stated that alcoholic beverages are served only at times during which there is a live performance or art show being offered. The Respondent confirmed that theatrical seating or permanent tables with seated viewing areas do not exist, smoking and drinking take place within the operation and there is no art displayed during the evening hours other than pieces incidental to the permanent décor.

Ms. Mosler also answered questions regarding a change of signage from "Kelsey Club" to "The Kelsey" to which Ms. McBride conducted re-direct examination and received information regarding the reasons for this change.

The Respondent's next witness, John Ciulla, the Kelsey Club's general manager, after being sworn in, commenced testimony. Mr. Ciulla gave information relating to his background in the performing arts, his job duties which include

management of the talent booking and Kelsey Club staff. He also confirmed the sale and service of alcoholic beverages in conjunction with the live performances held at the business.

Special Master noted for the record as accepted into evidence without objection: A printed copy of a calendar of scheduled events for the Kelsey Club as viewable on the business website, marked for identification as Respondent's Exhibit 2.

Mr. Ciulla's testimony further answered questions posed regarding a meeting with the Town Manager, Doug Drymon wherein the Town's concerns were discussed and possible solutions offered included the change of business name to exclude the word "club".

Special Master received information regarding the percentage of gross revenue derived from the sale of alcohol on the date of the observed code violations in comparison with other dates of operation.

Ms. Roselli's cross examination of this witness consisted of questions regarding fees for admission, and the type of entertainment provided in the evenings. It was confirmed that the performances are primarily of a musical concert variety with no dramatic plays staged at the facility. Mr. Ciulla stated that cigarette smoking is permitted within the building during hours of operation.

In re-direct examination, Ms. McBride asked Mr. Ciulla to reiterate how revenue is generated by the performances presented.

Special Master received testimony regarding the revenue gained by percentage of alcohol sales versus cover charges on the occasion of a non-promotional event.

The Respondent's next witness, Desca Dubois, after being sworn in, presented testimony regarding her patronage of the Kelsey Club and the Mos'art Gallery. Ms. Dubois stated that, as an artist, her own work has been featured at the gallery. Testimony confirmed the sale and service of alcohol during events including art shows and musical performances, and Ms. Dubois' background in the performing arts as a Professor of Movement, along with an assessment of what by definition constitutes a "theater".

The Town had no questions for this witness.

Jay Bassist, manager of the Mos'art Gallery, after being sworn in, commenced testimony. Mr. Bassist's testimony included information regarding his job responsibilities involving the art shows and recruitment of clients and artists for presentations. Mr. Bassist confirmed the hours of the gallery's operation and that the business is open to all ages and the sale and service of alcohol in conjunction with the art shows.

Cross examination was conducted by Ms. Roselli. Questions included inquiries regarding how many art shows are scheduled annually, whether cigarette

smoking is permitted in proximity to the art displayed and the differences of business use in the day compared to the evening.

Ms. McBride's re-direct examination affirmed Mr. Bassist's realm of knowledge and responsibility as being that of the art gallery only and primarily to the daytime operations of the business.

The Respondent's final witness, Alan Simon, Esq. was presented after being sworn in. Mr. Simon, as corporate counsel for the Mos'Art Center attested to his attendance at a meeting between the Respondent, the Town Manager, and Jamie Gentile, Interim Community Development Director to address the Town's concerns regarding the Kelsey Club's patrons and business activities.

The Town had no questions for this witness.

At 6:15 p.m. Special Master called a recess to the Kelsey Club location in order to observe the business in relation to testimony presented.

At 6:25 p.m. the hearing reconvened in the Kelsey Club's main auditorium where Special Master noted the following observations:

Chain link fencing separating the main auditorium from the foyer, movable panels for artwork display, barrier fencing between the performance stage and the main floor, high-top tables and bar stool seating, two bars with seating located on the east and south side of the building interior.

Special Master received information from Mr. Ciulla and Ms. Mosler regarding the use of a small enclosed fenced "VIP" seating area to the south east corner of the main floor, the art work displayed in the foyer, promotional banners and television projection screens observed in the main area.

Special Master observed the main stage and backstage operations area accompanied by John Ciulla where information was received regarding the specialized sound and lighting equipment and motorized theater curtain utilized for the live performances.

Special Master instructed the attorneys in this case to submit closing arguments in writing postmarked no later than Friday, September 23, 2004.

#### V. ADJOURNMENT:

There being no further business to come before the Special Master, the Hearing was adjourned at 6:40 p.m.



Paul J. Nicoletti, Special Master

ATTEST:

  
Melanie D. Dahlen, Code Compliance Secretary

Approved on: November 18, 2004